

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment)	NOTICE OF PUBLIC HEARING
of ARM 24.29.1533 and 24.29.1538)	ON PROPOSED AMENDMENT
related to the workers' compensation)	
medical fee schedule for nonfacilities)	

TO: All Concerned Persons

1. On December 1, 2008, at 3:00 p.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (room 104) of the Walt Sullivan Building, 1327 Lockey Street, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 24, 2008, to advise us of the nature of the accommodation that you need. Please contact the Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Jeanne Johns, P.O. Box 8011, Helena, MT 59624-8011; telephone (406) 444-7710; fax (406) 444-3465; TDD (406) 444-5549; or e-mail jjohns@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Section 39-71-704(2)(a), MCA, requires the Department of Labor and Industry to annually establish a schedule of fees for medical services provided to injured workers. In addition, 39-71-704(2)(b)(i), MCA, sets a cap on the conversion factors the department may set for reimbursement rates at nonfacilities. Further, ARM 24.29.1538(5)(b) requires the department to annually set the new conversion factors at 110 percent of the surveyed average of the top five insurers or third party administrators providing group health coverage in Montana. The proposed amendments comply with these requirements and establish conversion factors for services provided by an individual provider at a nonfacility or a facility.

4. The rules proposed to be amended provide as follows, stricken material interlined, new material underlined:

24.29.1533 NONFACILITY FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) The department adopts the fee schedule provided by this rule to determine the reimbursement amounts for medical services provided by an individual provider at a nonfacility or facility furnished on or after January 1, 2008. An insurer is not obligated to pay more than the fee provided by the fee schedule for a service provided within the state of Montana. The fee schedule is comprised of the following elements:

(a) remains the same.

(b) the RVU given in the ~~2007~~ 2008 edition of the RBRVS, which is incorporated by reference, unless a relative value is otherwise specified in these rules.

(i) The 2007 edition of the RBRVS applies to services provided from January 1, 2008, through December 31, 2008;

(c) the publication "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for ~~2008~~ 2009", ~~September 2007 edition~~, which is incorporated by reference.

(i) The "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for 2008", September 2007 edition, applies to services provided from January 1, 2008, through December 31, 2008;

(d) through (12) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1533 to update the rule to use the current publication of the RBRVS. It is also reasonably necessary to add that the 2007 edition of the RBRVS will continue to apply to claims from the 2008 time period, even though the edition is proposed to be updated to 2008 for the coming year. There is also reasonable necessity to provide for a 2009 edition of the instruction set, and to specify that the 2008 instruction set will apply to services provided during calendar year 2008.

24.29.1538 CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 -- METHODOLOGY (1) remains the same.

(2) The conversion factors are established annually by the department pursuant to 39-71-704, MCA. The conversion factor for goods and services, other than anesthesia services:

(a) provided ~~on or after~~ from January 1, 2008, through December 31, 2008, is \$63.45; and

(b) provided on or after January 1, 2009, is \$65.28.

(3) The conversion factors are established annually by the department pursuant to 39-71-704, MCA. The conversion factor for anesthesia services:

(a) provided ~~on or after~~ from January 1, 2008, through December 31, 2008, is \$57.20; and

(b) provided on or after January 1, 2009, is \$61.98.

(4) and (5) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1538 to annually update the conversion factors used in determining the reimbursement amount payable to medical providers, as required by 39-71-704(2)(a), MCA. Section 39-71-704(2)(b), MCA, bases the annual calculation of the conversion factors at a rate not higher than 10 percent above the average of the conversion factors used by

the top five insurers or third-party administrators providing disability insurance who use the RBRVS system. The conversion factors proposed are calculated in compliance with the statute. There is reasonable necessity to actually establish the dollar amount of the conversion factors that will be applied beginning January 1, 2009. The department notes that the system establishing two nonfacility conversion factors, one for anesthesia services and another for all goods and services other than anesthesia services, is dictated by the design of the RBRVS system.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Jeanne Johns, Workers' Compensation Regulation Section Supervisor, Workers' Compensation Regulation Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59624-8011; by facsimile to (406) 444-7710; or by e-mail to jjohns@mt.gov, and must be received no later than 5:00 p.m., December 5, 2008.

6. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 27, 2008